



# Private Art Mural Guidelines

Art Murals are permitted under the Tempe Zoning Code for commercial property owners and artists to create a one-of-a-kind, hand-painted, hand-tiled, or digitally printed image and make it an integral part of an exterior wall. Applications are processed as a staff-level Development Plan Review (DPR) through the Community Development Department, and the current (FY 2020-2021) application fee is \$283. Appeals of an application denial can be made to the Development Review Commission.

For questions regarding Art Mural applications, contact:

Rebecca Blume Rothman  
 Director of Public Art  
[rebecca\\_rothman@tempe.gov](mailto:rebecca_rothman@tempe.gov)  
 (480) 350-2827

## Steps to obtain approval for an Art Mural:

Applicants must submit their completed documents to the Community Development front counter any Monday before 5pm for review and approval. The process takes 15 business days. The application package should include the following:

1. Completed application form and fee
2. Letter of explanation, which includes information about the artist (biography and/or artist resume)
3. Artwork design
4. Site plan or aerial photo that identifies on which wall the mural will be located
5. Photos of the building/wall
6. Building elevation showing where on the wall the mural is proposed

## Murals cannot:

- Cover doors and windows;
- Use metallic paint, reflectors, rotating lights or lights pointing towards the street;
- Contain new electrical or lighting components;
- Contain explicit material;
- Extend beyond the surface of the building wall or have materials that fasten to the wall;
- Contain sign copy or logos; or
- Be installed on a designated historic property.

When developing content for a mural, the City of Tempe asks that property owners consider the Character Area in which the building is located. For more information on Character Areas, see:

<https://www.tempe.gov/government/community-development/character-areas>

See attached form as a guide for completing an application.

For more information regarding the Development Plan Review application/process: Community Development  
 Garden Level of Municipal Building 31 E. 5th Street Tempe, AZ 85281

Telephone: 480-350-4311

<https://www.tempe.gov/government/community-development/planning>

### Notice to Property Owners regarding the Visual Artist Rights Act (VARA):

When an artist paints a mural on a building or a wall, the artist will own the copyright in that mural (for the design) once it is created, unless it is considered a work for hire or the artist assigns or transfers the copyright to the property owner through a contractual arrangement. The owner of the building or wall however is the owner of that particular “copy” of the artwork.

Under VARA, works of art that are completed by an artist “of recognized stature” afford their authors additional rights in the works, regardless of any subsequent physical ownership of the work itself, or regardless of who holds the copyright to the work. This includes the removal, replacement, alteration, or destruction of public works of art such as murals. Determining whether a particular mural is of “recognized stature” requires a factual analysis as to whether the work is viewed as meritorious and recognized by art experts, other members of the artistic community or some other cross-section of society and this can involve recognition of the work itself or of the artist. VARA does not protect advertising, promotional or utilitarian works.

VARA exclusively grants authors of works that fall under the protection of the Act the following rights:

- Right to claim authorship
- Right to prevent the use of one's name on any work the author did not create
- Right to prevent use of one's name on any work that has been distorted, mutilated, or modified in a way that would be prejudicial to the author's honor or reputation
- **Right to prevent distortion, mutilation, or modification that would prejudice the author's honor or reputation**

Under VARA, before a qualifying artwork could be painted over, changed, moved, or destroyed, the property owner would need to give 90 days’ notice to the artist before taking any action. Failure to give such notice could result in damages being assessed against the property owner if the artist successfully sues the property owner for any violations of such rights under VARA.

Therefore, property owners may want to ask artists to sign a VARA waiver in the event that they want to sell the property, remove the artwork, or replace the mural in the future. For more information on VARA see <http://greetingstour.com/vara.pdf>. If the artist wants to retain VARA rights, and if practical and agreed to by the property owner, the mural could be painted on a removable medium, however, physical ownership of the mural should then be determined between the artist and the property owner and their respective rights should be determined contractually. Both parties should consult legal counsel for further guidance. For an example of a VARA waiver, see attached.

**ARTIST WAIVER OF RIGHTS UNDER THE VISUAL ARTISTS RIGHTS ACT OF 1990 (VARA)**

I, \_\_\_\_\_, am the artist who will paint or has painted the mural located at \_\_\_\_\_ on the private property of \_\_\_\_\_ ("Property Owner") and as such do hereby waive and release the Property Owner from any claims, past, present or future that I may have had, have or may have in the future related to the mural, including but not limited to, any moral rights I may have had, have or may have in the future, including all notification rights, the right of attribution and the right of integrity, as well as any rights I may have had, have or may have in the future under the Visual Artists Rights Act of 1990 ("VARA").

Artist Signature: \_\_\_\_\_ Date: \_\_\_\_\_